STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: SEPTEMBER 29, 2022

IN THE MATTER OF:
Appeal Board No. 623628

PRESENT: JUNE F. O'NEILL, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective April 9, 2021, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by FLUSHING HOSPITAL prior to April 9, 2021 cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which testimony was taken. There was an appearance by the claimant. Prior to the hearing, the employer wrote to the Hearing Section to request an adjournment because its witnesses were not available, including one who was unavailable for a medical reason. By decision filed March 29, 2022 (A.L.J. Case No. 022-03255), the Administrative Law Judge overruled the initial determination.

The employer applied to reopen the decision of the Administrative Law Judge filed March 29, 2022. Upon due notice to all parties, a hearing was held at which testimony was taken. There was an appearance on behalf of the employer. By decision filed May 11, 2022 (), the Administrative Law Judge granted the employer's application to reopen A.L.J. Case No. 022-03255 and sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board. The Board considered the arguments contained in the written statements submitted on behalf of the claimant and the employer.

Our review of the record reveals that the case should be remanded to hold a

hearing. The claimant contends she did not appear at the most recent hearing because she inadvertently misstated her phone number when she called the Hearing Section to provide updated contact information. When she again called the Hearing Section to say she had not received the Judge's phone call, the hearing had already started, and the claimant was not permitted to join the hearing late. The claimant has shown good cause to excuse to excuse her failure to appear at the most recent hearing. In the interest of justice, the Board has determined to provide the claimant another opportunity to appear and testify in this matter. Prior the remand hearing, the claimant or her representative shall arrange with the Hearing Section to review the transcript of the hearing held on May 10, 2022, and the exhibits that were taken into evidence at that hearing. The claimant shall be afforded an opportunity to cross-examine the employer witnesses and offer any objections to the exhibits. The employer shall be afforded an opportunity to cross-examine the claimant regarding her testimony at the hearing held on March 29, 2022. The employer is directed to produce Andrea Goldman and Bernadette Dungo to testify at the remand hearing. In addition, the Judge shall take such further testimony and evidence as may be necessary to complete the record.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issue of misconduct ONLY, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issue of misconduct, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

JUNE F. O'NEILL, MEMBER